Supreme Court, U. S.
FILED
JUL 27 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1977

No. 77-150

LENA ROSA K. CONLEY,

Petitioner

v.

THE UNITED STATES,

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF CLAIMS

LENA ROSA K. CONLEY
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Norfolk, Virginia
23508
pro se

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July 27, 1977

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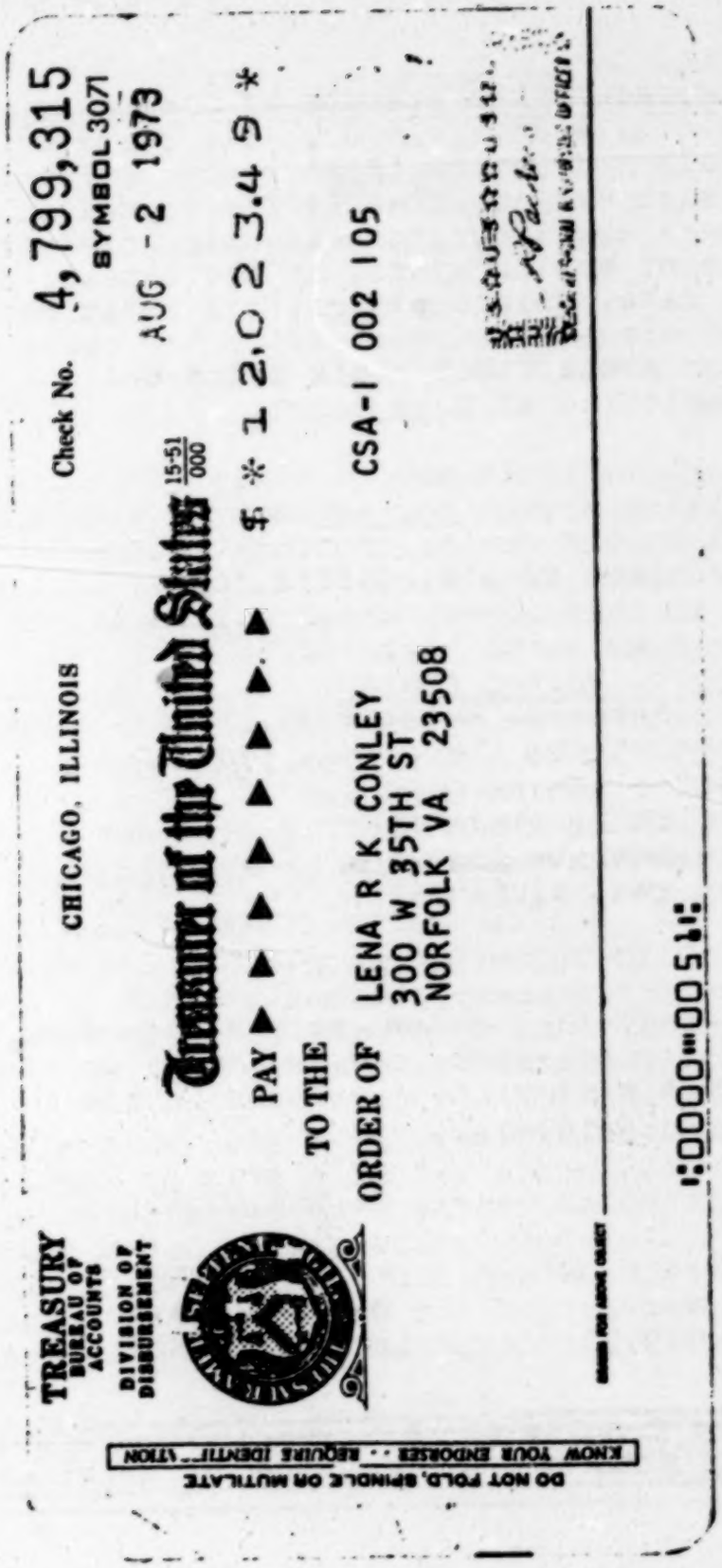
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Lena Rosa K. Conley, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Claims in the above entitled case and Contested CSA-1 002 105 and Treasurer of the United States Check No. 4,799,315 dated AUG -2 1973 attached:

(CHECK attached to next page of original)


CHICAGO, ILLINOIS

Check No. 4,799,315
SYMBOL 3071
AUG -2 1973

The United States 15-51/000

PAY ▲ ▲ ▲ ▲ ▲ $ * 1 2,0 2 3.4 9 *

TO THE ORDER OF LENA R K CONLEY
300 W 35TH ST
NORFOLK VA 23508

CSA-I 002 105

!:0000"005!1:

TREASURY
BUREAU OF ACCOUNTS
DIVISION OF DISBURSEMENT

DO NOT FOLD, SPINDLE OR MUTILATE
KNOW YOUR ENDORSER . . REQUIRE IDENTIFICATION

OPINION BELOW

Petitioner seeks the review of the Order in No. 540-76 in the United States Court of Claims dated July 8, 1977, which is set forth hereto at pages 6 and 7.

JURISDICTION

Jurisdiction of this Court is invoked under 28, U. S. Code, Section 1254, as there are SPECIAL AND IMPORTANT REASONS justifying grant of review on writ of certiorari in the sound judicial discretion of this Court within the meaning of Rule 19 of the Rules of this Court. There is an important question of federal law which has not been, but should be, settled by this Court.

QUESTION PRESENTED FOR REVIEW

Whether involuntary retirement of a Government employee for total psychiatric disability, based solely upon a contradicted statement of a psychiatrist, is a violation of the right to due process of law.

In this case, the psychiatrist found disability TWO YEARS BEFORE he saw employee, for a position the employee never held, in contradiction to the psychiatrist whose opinion was refused by the Civil Service Commission in 1966 and accepted in 1971!

STATUTE INVOLVED

Title 5, U. S. Code, Section 8347(c):

"The decisions of the Commission concerning these matters are final and conclusive and are not subject to review."

CONSTITUTIONAL PROVISION INVOLVED

Fifth Amendment: "No person shall be... deprived of life, liberty, or property without due process of law . . ."

STATEMENT OF THE CASE

Misuse of fitness-for-duty examinations based upon psychiatric allegations during employee's recruited employment occurred on several occasions:

First, false statements at American Embassy, Jidda, Saudi Arabia, caused observation at Bethesda Naval Hospital who issued a clean bill of health April 22, 1966;

Second, false statements after second psychiatric clearance following major surgery and treatment for parasites resulted in illegal dismissal from duty in October 1966,

Third, false statements made after employee's coerced resignation of July 13, 1973, qualified employee for restoration to annuity status, but was not provided!

REASONS FOR GRANTING WRIT

Petitioner suggests to the Court that Title 5, U. S. Code, Section8347(c), by which decisions of the Civil Service Commission concerning disability matters are final and conclusive and are not subject to review, violates the Fifth Amendment to the Constitution as misapplied to this and similar cases!

The Civil Service Commission has never offered an alternative to acceptance of the fraudulent Treasurer of the United States check! Petitioner has offered several.

CONCLUSION

Wherefore, the premises Considered, Petitioner believes there are special and important reasons justifying grant of a writ of certiorari in this case,

and a full and complete review of all the court actions to which this nonlawyer has had to resort in response to recommendations of the several lawyers who had not time to act for her.

Respectfully submitted,

Lena Rosa K. Conley

Lena Rosa K. Conley,
pro se.

IN THE UNITED STATES COURT OF CLAIMS

No. 540-76

LENA ROSA K. CONLEY

v.

THE UNITED STATES

Lena Rosa K. Conley, Pro se.

Susan M. Linden, with whom was Assistant Attorney General Barbara Allen Babcock, for defendant.

Before DAVIS, Judge, Presiding, NICHOLS and KASHIWA, Judges.

ORDER

This civilian pay case comes before the court on cross motions for summary judgment. There is no material issue of fact as to the timeliness of plaintiff's claim or the controlling nature of prior court decisions with relation to this same case.

Plaintiff, Lena Rosa K. Conley, filed her petition in this court on December 21, 1976, alleging two causes of action. Plaintiff's first cause of action, involving an allegedly fraudulent check issued to her in 1973 because of her medical disability in 1966,[1]

[1]Contending that she was not really disabled, plaintiff refused to accept periodic disability payments. Accordingly, the Civil Service Commission held the funds until 1973, when they issued the lump sum check to plaintiff.

is barred by the statute of limitations. 28 U.S.C. § 2501 (1970). The Board of Appeals and Review (BAR) rendered its final decision denying plaintiff's appeal on January 27, 1967; consequently, plaintiff's cause of action arose, at the latest, on that date. Since plaintiff's petition was filed almost ten years after her cause of action arose, that claim is beyond the jurisdiction of this court.

Plaintiff's second cause of action, revolving around her employment with the Naval Supply Center, Norfolk, Virginia, was the subject of plaintiff's former litigation in this court, which culminated in an order dismissing plaintiff's petition. Conley v. United States, Ct. Cl. No. 165-76 (Order entered November 26, 1976). That order controls the disposition of the present claim as a matter of law; accordingly, plaintiff's second cause of action must be dismissed under the principle of res adjudicata. Therefore,

IT IS ORDERED that plaintiff's cross motion for summary judgment be and is hereby denied, that defendant's motion for summary judgment be and is hereby granted and that plaintiff's petition be and is hereby dismissed.

BY THE COURT

/s/ Oscar H. Davis

Oscar H. Davis
Judge, Presiding

JUL 8 1977

CERTIFICATE OF SERVICE

I hereby certify that three printed copies of the Petition for a Writ of Certiorari are being delivered to the Office of:

The Solicitor General,
Department of Justice,
Washington, D. C. 20530.

Lena Rosa K. Conley

Lena Rosa K. Conley,
pro se.

July 27, 1977.